in general average. That merely affects the distribution of the loss, not its cause. The claim of the cargo owners for their general average contributions is not in any sense a derivative claim. It accrues to the cargo owners in their own right. It accrues because of cargo's own participation in the common adventure and the action taken on behalf of cargo and by its representative to avert a peril with which that adventure was threatened. Being cargo's own share of the expense incurred in the common interest, the amount which is paid properly belongs in the category of damage which the cargo owners have suffered by reason of the collision. *The Energia,* 61 Fed. 222; 66 Fed. 604, 608. The right does not stand on subrogation any more than the right of Sucarseco to bring into the division of damages the amount it has to pay to the cargo owners rests on subrogation. See *Erie Railroad Co.* v. *Erie & Western Transportation Co., supra.* In each case the right arises directly from the tort.

The contention as to remoteness is but another way of presenting the same question. This is not a case of an attempt, by reason of "a tort to the person or property of one man", to make the tortfeasor liable to another "merely because the injured person was under a contract with that other, unknown to the doer of the wrong". See *Robins Dry Dock & Repair Co.* v. *Flint,* 275 U. S. 303, 309; *Elliott Steam Tug Co., Ltd.,* v. *The Shipping Controller* [1922] 1 K. B. 127, 139, 142; *The Federal No. 2,* 21 F. (2d) 313. Here, cargo as well as ship was placed in jeopardy. That jeopardy was due in part to the negligence of the vessel against which the claim is made. The fact that the vessel and the cargo under the "Jason clause" bear their proportionate shares of the expenses gives Sucarseco no ground for a contention that the expenses themselves, or the share that cargo bears, were not occasioned directly by the tort. In the light of the nature of the general average contributions, and of the event which made them necessary, the fact that they were made under the stipulation in the "Jason clause" is no more a defense to Sucarseco than is the fact that the cargo was placed on board under a contract to carry it. Indeed, Sucarseco makes no contention of immunity. The question arises only because, through recovery by the cargo owners from Sucarseco, Toluma's share of the ultimate division is affected. But that does not establish remoteness. We have the anomalous situation that it is Toluma

that is opposing the cargo owners' claim against Sucarseco, while Toluma has collected from cargo its share of the general average expenses on the ground that they were incurred on cargo's behalf and were due to the collision.

As we have said, the "Jason clause" merely distributed a loss for which Sucarseco was responsible and in that view the cargo owners are entitled to recover that part of the loss which they have sustained.

The decree of the Circuit Court of Appeals is affirmed.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.